

SOME NEW BOOKS.

Primitive Marriage.

In three volumes, each comprising upward of four hundred pages, will be found *A History of Matrimonial Institutions* from prehistoric times to the present day, by GEORGE ELLIOTT HOWARD, professional lecturer in the University of Chicago (Callaghan & Co.). The ultimate purpose of the book is to trace the development of the family and of marriage in the three homes of the English-speaking race; that is to say, in Northern Germany, in the United Kingdom and in the United States. Pertinent to this purpose is the general question of the genesis of human marriage and of the human family. To understand the modern aspects of marriage it is needful to appeal to the general sociological facts surrounding its origin and its early history among the races of mankind. To the elucidation of this subject is devoted the first part of this work, which covers about two hundred and fifty pages of Dr. Howard's first volume. In the course of his discussion of primitive matrimonial institutions he discusses at some length the "patriarchal" theory associated with the name of Sir Henry Maine; the theory of the "horde" and "mother right," propounded by Bachofen, and adopted in a more or less modified form by Morgan and McLennan; and, finally, the theory of original "pairing," or of a primitive monogamous family, advocated by Darwin and Spencer, and upheld by Starcke and Westermarck. It is this preliminary section of the extensive work before us to which we shall here confine ourselves, reserving for a subsequent notice the two and a half volumes allotted to a chronological and philosophical study of matrimonial institutions in England and the United States.

It was Sir Henry Maine who, in his famous book "Ancient Law," which appeared in 1861, asserted that the "effect of the evidence derived from comparative jurisprudence is to establish that view of the primitive condition of the human race which is known as the Patriarchal Theory." As conceived by Maine, the primitive family was substantially the Roman family, not in all respects as the latter appeared in its historical period, but as it is supposed to have been constituted before the process of transformation and decay began. It was a much more extended group than is the modern family, embracing as it did, under the headship of the eldest valid male parent, all agnate descendants (i.e., all descendants traced through males only), and all persons entitled by adoption, or by other legal devices and other dependencies. The power of the house father was most despotic, and was exercised during his entire lifetime, not only over the unmarried daughters, but also over even the married sons and their wives and children. Thus it is said that originally the Roman paterfamilias had power of life and death over his children. He might sell them into slavery; while, on the other hand, his sons, even those who might hold the highest offices of State, could originally hold no property. The patriarch was king and priest of the household. Maine found evidence of the existence of the *patria potestas* among the Hebrews, as well as among all the peoples of Aryan stock; and he believed that it would be hard to find any race of men in which it was not allowable to lay down that the society in which they are united was originally organized on the patriarchal model. Maine conceded, indeed, that the *patria potestas* in its "normal state" could not be "generally a durable institution;" but he held that its former universality may be inferred from certain derivative institutions, such as the perpetual tutelage of women, the jurisdiction of minors, the relation of master and slave, and especially from agnation (the system of kinship through males only), which is "found almost everywhere," and is, "as it were, a mould," retaining the imprint of the paternal powers after they have ceased to exist.

In the patriarchal family as thus constituted, Maine thought that the only thing to recognize the "type of an archaic society" in all the modifications which it was capable of assuming. From it, as in concentric circles, have been evolved successively all the higher forms of political organization. Everywhere, as at Rome, "the aggregation of families forms the *gens*, or house. The aggregation of houses makes the tribe. The aggregation of tribes makes the nation, or the commonwealth." The State is therefore the result of the expansion of its primordial cell, the patriarchal family; and the general organization of society precedes and overlaps the territorial. All these groups, lower and higher, regard themselves as united by the bonds of kinship. As a matter of fact, however, the kinship is not real, but assumed; the actual basis of the society is explained as the result of the fiction of "adoption," by which relationship was artificially extended. Maine could not see how, without this fiction, "any one of the primitive groups, whatever their nature, could have absorbed another, or on what terms any two of them could have combined, except those of absolute superiority on one side and absolute subjection on the other." In other words, without the fiction of adoption society could hardly have escaped from its "swaddling clothes." Furthermore, a strong motive for the artificial extension of the family was derived from the worship of ancestors. The earnest desire of the ancients for male issue to perpetuate the family rites tended to foster adoption, and probably accounted for the levirate (or marriage of a widow to the brother of her deceased husband) and other similar expedients to provide an heir.

There is no doubt that the theory of the patriarchal family propounded in "Ancient Law," and reassured with slight modifications in the later writings of Sir Henry Maine, obtained for a time wide acceptance. It was inevitable, however, that a theory which on its face appeared to neglect many remarkable facts everywhere observable in the social life of primitive men should provoke serious doubt. Herbert Spencer was the first writer to subject the hypothesis to illuminating and incisive criticism. He pointed out that Maine had not been guilty of the "lofty contempt" entertained by civilized peoples for their barbarous neighbors which he himself had censured as a serious error; for he "practically disregarded the great mass of the uncivilized peoples and ignored the vast array of facts they present at variance with his theory." Nor did Mr. Spencer deem it safe to assume, as Maine assumed, that "the unquestioning obedience of rude men to their parents is a primary fact." This assumption was disputed by Spencer on the *a priori* ground that, "though among lower races sons while young may be subordinate, from lack of ability to resist; yet that they remain subordinate when they become men cannot be assumed as a uniform and therefore as a primary fact." This objection Spencer sustained by references to many savage or barbarous tribes, among which parents have been observed to exercise little or no control over the children. He also showed it to be verily not established that, as a matter of fact, "the history of political life begins with the assumption that kinship in blood is the possible ground of community in

political functions." Spencer asserted that, on the contrary, "political cooperation arises from the conflict of social groups with one another," and though it may be facilitated by a feeling of common descent, examples of political combination on the part of primitive peoples might be produced in which relationship was not considered. Furthermore, the author of the "Evolutionary Philosophy" pronounced it hard to conceive how so advanced a conception of government as is implied by the *patria potestas* could exist in the "infancy of society," and it was declared to be as yet unproved that in the primitive state the individual is "entirely lost in the family group, which holds all property in common." That the "personal freedom of property" among low races were shown not to be wanting. Finally, the assumption that in the primordial state women remained in perpetual tutelage was avowed by Spencer to be without foundation.

Mr. J. F. McLennan, for his part, attacked the patriarchal theory in its very stronghold; to wit, the laws of the Hebrews and the primitive customs of the Indo-Germanic peoples. Among none of the Aryan races, the Romans only excepted, could he find the *patria potestas*, or the strict rule of agnation; while among them all, as he believed, was disclosed abundant evidence of original promiscuity and of the superposition of the maternal system of kinship. Even the Hebrew Scriptures, wherein Mr. McLennan perceived "the chief lineaments" of the patriarchal society, not only fail, in McLennan's opinion, to reveal the *patria potestas* and agnation, but bear witness to "beena" marriage and the recognition of kinship in the female line. By "beena" marriage is meant a peculiar institution existing in Ceylon, in pursuance of which a husband leaves his family which is his by birth, and passes into the family of his wife, to which latter he belongs as long as the marriage subsists. The children belong not to him, but to the family of their mother. The man leaves father and mother as completely as where the patriarchal family prevails, a bride would be. McLennan was undoubtedly mistaken in supposing that the marriage of Jacob with Leah's daughters to have been an example of the "beena" institution. What we witness in the case of Leah and Rachel is evidently that form of wife purchase called "marriage by service." After Jacob had served the prescribed number of years for Leah and Rachel, he took them away from their father, and set up what seems to have been a patriarchal family of his own. While, however, Jacob's relation to Leah was uninterpreted, there is no doubt that the principal conclusions of McLennan were sustained in a striking way for a sister branch of the Semitic race by the researches of Wilken and Robertson Smith into the marriage customs of early Arabia. It is true, too, as McLennan says, that the patriarchal family of his own. While, however, Jacob's relation to Leah was uninterpreted, there is no doubt that the principal conclusions of McLennan were sustained in a striking way for a sister branch of the Semitic race by the researches of Wilken and Robertson Smith into the marriage customs of early Arabia. It is true, too, as McLennan says, that the patriarchal family of his own. While, however, Jacob's relation to Leah was uninterpreted, there is no doubt that the principal conclusions of McLennan were sustained in a striking way for a sister branch of the Semitic race by the researches of Wilken and Robertson Smith into the marriage customs of early Arabia.

Let us now look at the theory of the "horde" and "mother right" put forward by Bachofen and his disciples. In the same year which witnessed the publication of "Ancient Law" appeared a book which, though deficient in scientific method, was destined to give a new direction to speculation and research. This was the *Mutterrecht* of the Swiss scholar Johann Jacob Bachofen, a work the material of which was drawn mainly from two sources: the fragmentary notices of the rules of kinship and the matrimonial customs of various peoples handed down from ancient writers, supplemented by modern travelers, and with similar accounts by modern travelers, and fanciful interpretation of the supposed symbolism of religious myths, particularly those of the Greeks. The author first discussed the description of Lycian customs given by Herodotus and others, a description which, in Bachofen's opinion, contains the clearest and most cogent evidence of the existence of a distinct form of kinship. He then followed a presentation of the evidence derived from Crete, Athens, Lemnos, Egypt, India and Central Asia, Orchomenos and the Myne, Epiphysian Lycoris, Elis, Lesbos, Mantinea, the Cantabrians and from the Pythagorean system.

According to Bachofen, there are three general phases in the evolution of human social organization. The first is the period of apothridistic hetaerism, in which men and women live together in common; the second is the period of demetrian mother-right, or gynocracy, in which kinship and succession are in the maternal line, and woman gains religious and political supremacy; and the third, the period of patriarchate, or apothridistic father-right, in which the male is triumphant. Each of these periods is regarded not as a sporadic phenomenon, but as a universal culture-stage. In the first phase, that of unregulated sexual communion, material motherhood is the essential fact. Fatherhood is necessarily uncertain. There is no conception of kinship through father and son. The sexual tyranny of man, and of the levirate (or marriage of a widow to the brother of her deceased husband) and other similar expedients to provide an heir.

It will be observed that Bachofen's theory assumes, as a universal fact in social evolution, that a period of promiscuity and oppression of the female sex is invariably followed not merely by an age of mother-right, involving as a necessary consequence of the continued uncertainty of fatherhood the recognition of kinship only in the maternal line, but also by an age of gynocracy, or female rule, involving the social leadership of women and eventually the political

and even military subordination of men. Woman first emancipates herself and then becomes an Amazon. Weary of man's sexual tyranny, she first experiences a longing for a secure position and a pure existence. The feeling of shame and the rage of despair inflame her to armed resistance. Having nerved herself to become a rival to man, the Amazon gradually becomes hostile to him, and began to withdraw from marriage and from motherhood. This attitude set limits to the rule of women, and provoked the punishment of heaven and men. Thus Jason put an end to the rule of the Amazons in Lemnos; thus Dionysos and Bellerophon strove together, passionately, yet without either obtaining any decisive victory, until Apollo, with calm superiority, finally became the conqueror; and so the purer principle of fatherhood prevailed and the era of father-right appeared. As Bachofen admits, the assumption that woman ever gained supremacy over man arouses our astonishment, because the fact is contrary to what we should expect from their relative physical powers. According to Bachofen, however, the paradox is easily explained. "At all times woman has exerted the most powerful influence upon man, upon the culture and morals of peoples," through the instinctive direction of her mind toward the supernatural, the wonderful and the divine. It was through her possession of the mysteries of religion that, for a time, she deprived man of the superior position which Nature had given him. "Religion is the most efficient lever of all civilization. Each elevation and depression of human life has its origin in a movement which begins in this supreme department." Again: "Just as the child receives its first discipline from the mother, so do peoples receive it from woman. The man, however, who he can attain supremacy. To the wife alone it is given to curb the otherwise unbridled power of man and to guide him in the path of well doing."

Nevertheless, when out of the stage of mother right was developed Amazonism, or the political and military supremacy of women, the stage was administered to the religious feelings of mankind, just as gross hetaerism had proved an offence in the earlier period. Hence arose a striving for the realization of a higher conception of social relations. It was the assertion of fatherhood which emancipated the mind from the empire of the natural appearances that had caused the mother to be solely credited with her offspring; and when the conception of fatherhood was established, human existence was lifted above the laws of natural life. "The principle of motherhood is common to all species of animal life; man alone goes beyond this tie in giving the preeminence to the power of procreation, and thus becomes conscious of his higher vocation. By virtue of asserting the paternal and spiritual principle of life, he is already in the beginning, and looks upward to the higher regions of the cosmos. Victorious fatherhood thus becomes as distinctly connected with the heavenly light personified in Apollo, as prolific motherhood was with the teeming earth, of which the Greek myth made Demeter the guardian." Once more: "All the laws of the family, we can say, are based on the apothridistic principle of kinship, and look upward to the higher regions of the cosmos. Victorious fatherhood thus becomes as distinctly connected with the heavenly light personified in Apollo, as prolific motherhood was with the teeming earth, of which the Greek myth made Demeter the guardian." Once more: "All the laws of the family, we can say, are based on the apothridistic principle of kinship, and look upward to the higher regions of the cosmos. Victorious fatherhood thus becomes as distinctly connected with the heavenly light personified in Apollo, as prolific motherhood was with the teeming earth, of which the Greek myth made Demeter the guardian."

McLennan starts with the assumption, which, as we shall see hereafter, is disputable, if not erroneous, that man's primitive condition was not monogamous. The union of the sexes was, he thinks, in the earliest times loose, transient, and in some degree promiscuous. "There was no clear conception of consanguinity, though men may always have been held together by the 'feeling of kindred' which arises from 'filial and fraternal affection.' Everywhere, when society emerges from this condition, kinship is traced in the female line, and the paternal principle is certain; hence the recognition of relationship through the mother must, of necessity, have preceded the paternal and agnatic system. This order of development, according to McLennan, is never reversed. The conception of kinship through the mother is a social fact of fundamental importance.

Primitive man being relatively helpless, the struggle for existence led to the division of the arts and the formation of provident habits must often have been very serious. The instinct of self-preservation, therefore, must have frequently predominated, and there would be little room for the "unselfish affections." In the struggle for food and security, the balance of the sexes would be disturbed. As graves and hunting were required, and as hunting would be to the interest of every horse to rear, when possible, its healthy male children. The weaker sex was doomed to obey the cruel law requiring the "survival of the fittest." Hence arose the common, perhaps general, practice of female infanticide. The result of the disturbance of the balance of the sexes, McLennan believes, was that the female sex was required, and as hunting would be to the interest of every horse to rear, when possible, its healthy male children. 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